

Fla. High Court Affirms \$700M In Clean Energy Bonds

By **Nathan Hale**

Law360, Miami (October 1, 2015, 10:08 PM ET) -- The Florida Supreme Court on Thursday affirmed the validation of \$700 million worth of clean energy bonds for Leon and Miami-Dade counties in separate cases, but ordered that the financing agreements for each be amended to remove references to judicial foreclosure, as the appellants requested.

In the Leon County opinion, the state's highest court also receded from a previous decision to clarify that it is necessary to appear and plead in the circuit court proceedings to participate in bond validation proceedings, unlike the appellant in the case, Robert Reynolds.

"The Supreme Court's decision brings bond validations within the general rule that, for someone to have standing to appeal a judgment, they need to appear and raise arguments at the trial level. They can't wait until a final judgment is entered," said defense attorney Elizabeth W. Neiberger of Bryant Miller Olive PA, also noting the significance that the court's ruling for the first time upheld the validity of a property-assessed clean energy program.

Reynolds argued that a circuit court's order validating a proposed \$200 million bond issue should be reversed because it impermissibly would allow the Leon County Energy Improvement District to use judicial foreclosure on property owners participating in energy efficiency programs that fail to pay their assessments. The statute creating the LCEID does not grant it foreclosure powers, he held.

The bonds are to be used to provide upfront financing to property owners that want to make energy-saving improvements to their buildings, according to court documents.

In the [Miami-Dade case](#), three South Florida residents pointed to the same issue over judicial foreclosure to challenge validation of a \$500 million bond issuance for Clean Energy Coastal Corridor, an entity originally formed through an [interlocal](#) agreement of three Miami-Dade County municipalities to help homeowners fund energy and wind-resistance improvements.

The appellants in that case also claimed that a circuit court violated their due process rights by validating without giving them a chance for further review, although Clean Energy said the court merely made an interpretation within the law and in line with their position.

The Supreme Court offered more detailed analysis in the Miami-Dade opinion, which it applied to the Leon County ruling.

Prior case law says that the question of a public body's authority to issue specific bonds includes the legality of the financing agreement that forms the basis for securing the bond, the court said.

"In this case, the financing agreement's references to judicial foreclosure are inconsistent with its requirement — and Florida law — that collection of non-ad valorem assessments must be accomplished pursuant to Chapter 197's uniform method," it said in the Miami-Dade opinion.

On the issue of standing, the court said in the Leon County opinion that it must recede from its decision in 1955's *Meyers v. City of St. Cloud*, which Reynolds relied on to argue that under Chapter 75 of the Florida Statutes, which governs bond validation, parties can file a direct appeal to challenge bond validation.

The Meyers ruling, the court now said, "fails to take into account central provisions of the statutory scheme governing bond validation proceedings."

"Under the plain terms of the statute, any person wishing to participate in bond validation proceedings must appear in the circuit court," it added.

This conclusion also makes the right of appeal in bond validation proceedings consistent with the general rule that "failure to participate as a party in the lower tribunal precludes the ability to invoke appellate proceedings," the court said, quoting from the state's First District's 2012 ruling in *Bondi v. Tucker*.

Justice Charles T. Canady entered a dissent in the Leon County opinion, saying that by the majority's reasoning, Reynolds lacked standing to bring his appeal and the proper ruling would have been to dismiss the case.

In the Miami-Dade case, the high court agreed with the trial court and ruled that two of the three appellants, Sidney Karabell and Christopher Trapani, lacked standing as Broward County residents because Clean Energy had voluntarily dismissed Broward residents from the bond issuance. That left only Miami-Dade resident Vicky Thomas in the case.

"The Florida Supreme Court's decision was both a literal and figurative validation of a new 'green' home improvement funding program that will facilitate these critical upgrades for thousands of Florida residents," Clean Energy counsel Edward G. Guedes of [Weiss Serota Helfman Cole & Bierman PL](#) told Law360. "The Court correctly concluded that, at its base, the program operated through the [Clean Energy] Coastal Corridor entity was fundamentally sound and that the minor changes to be implemented on remand were those the entity had already agreed to prior to entry of final judgment."

Counsel who represented the appellants in both cases could not immediately be reached for comment late Thursday.

The appellants in both cases are represented by J. Stephen Menton of [Rutledge Eceria PA](#), and the Thomas appellants are also represented by James C. Dinkins of Mark G. Lawson PA.

Clean Energy is represented by Edward G. Guedes and Jeffrey De Carlo of [Weiss Serota Helfman Cole & Bierman PL](#).

The LCEID is represented by Leon County Attorney Herbert W.A. Theile, Susan H. Churuti, JoLinda Herring and Elizabeth W. Neiberger of Bryant Miller Olive PA, Jon Cameron Moyle Jr. and Karen Ann Putnal of The Moyle Law Firm, and Assistant State Attorney Georgia Anne Cappleman.

The cases are *Reynolds v. Leon County Energy Improvement District et al.*, case number SC14-710, and *Thomas et al. v. Clean Energy Coastal Corridor et al.*, case number SC14-1282, in the Supreme Court of Florida.